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<PREAMB>

9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0372]

RIN 1625-AA08

Special Local Regulation; Motor City Mile; Detroit River;  
Detroit, MI.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a special local regulation for certain waters of the Detroit River, Detroit, MI. This action is necessary and is intended to ensure safety of life on navigable waters to be used for a swimming event immediately prior to, during, and immediately after this event. This regulation requires vessels to maintain a minimum speed for safe navigation and maneuvering.

DATES: This temporary final rule is effective from 7 a.m. until 12 p.m. on July 6, 2017.

ADDRESSES: To view documents mentioned in this preamble as

being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0372 in the "SEARCH" box and click "SEARCH."

Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9564, or e-mail [Tracy.M.Girard@uscg.mil](mailto:Tracy.M.Girard@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
COTP	Captain of the Port
U.S.C.	United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds

that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this swimming event until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

We are issuing this rule under 5 U.S.C. 553(d)(3), as the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register for the same reason noted above.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to a youth swimming event along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a Special Local Regulation around the event location to help minimize risks to safety of life and property during this event.

### IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 7 a.m. until 12 p.m. on July 6, 2017. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: all waters of the Detroit River, Belle Isle Beach between the following two lines: the first line is drawn directly across the channel from position 42°20.517'N, 082°59.159'W to 42°20.705'N, 082°59.233'W (NAD 83); the second line, to the north, is drawn directly across the channel from position 42°20.754'N, 082°58.681'W to 42° 20.997'N, 082° 58.846"W (NAD 83).

An on-scene representative of the COTP or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state, or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16 or at 313-568-9560.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and

Local Notice to Mariners.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under

section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation zone which will impact a small designated area of 7 a.m. to 12 p.m. July 6, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the special local regulation and the rule allows vessels to seek permission to enter the area.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast

Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act



The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting nine hours that will limit entry to a designated area. It is categorically excluded under section 2.B.2, figure 2-1, and paragraph 34(h) of the Instruction. A Record of Environmental Consideration (REC) is available in the docket where indicated in the ADDRESSES section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 165.T09-0372 to read as follows:

§ 165.T09-0372 Special local regulation; Motor City Mile; Detroit River; Detroit, MI.

(a) Location. A regulated area is established to encompass the following waterway: all waters of the Detroit River, Belle Isle Beach between the following two lines: the first line is drawn directly across the channel from position 42°20.517'N, 082°59.159'W to 42°20.705'N, 082°59.233'W (NAD 83); the second line, to the north, is drawn directly across the

channel from position 42°20.754'N, 082°58.681'W to 42°20.997'N, 082°58.846"W (NAD 83).

(b) Enforcement period. This section is effective and will be enforced from 7 a.m. until 12 p.m. on July 6, 2017.

(c) Regulations.

(1) Vessels transiting through the regulated area are to maintain the minimum speeds for safe navigation.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9560. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The "on-scene representative" of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP Detroit or his

on-scene representative to obtain permission to enter or operate within the special local regulation. The COTP Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Detroit or his on-scene representative.

DATED: May 26, 2017

Scott B. Lemasters,  
Commander, U. S. Coast Guard,  
Captain of the Port Detroit.  
<FRDOC> [FR Doc. 2017-11465 Filed 6-1-17; 8:45 am]  
<BILCOD> BILLING CODE 9110-04-P  
[FR Doc. 2017-11465 Filed: 6/1/2017 8:45 am; Publication Date: 6/2/2017]